

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

CASE NO. 10-93904

EASTERN LIVESTOCK CO., LLC,

CHAPTER 11

DEBTOR

JOINTLY ADMINISTERED

JOINT OBJECTION TO FIFTH THIRD BANK'S MOTION TO CONTINUE HEARING

Come East Tennessee Livestock Center, Inc., Southeast Livestock Exchange, LLC, Moseley Cattle Auction, Inc., Piedmont Livestock Company, Inc., Alton Darnell, CPC Livestock, LLC, Alabama Livestock Auction, Inc., Sealy and Sons Livestock, LLP, Ashville Stockyard, Inc., Athens Stockyard, LLC, Billingsley Auction Sales, Inc., Carroll County Livestock Sales Barn, Inc., Macon Stockyards, Inc., Edwin E. Strickland d/b/a Strickland Farms, Roberts Rawls d/b/a Robert Rawls Livestock, and Glen Franklin (collectively, the "Objecting Creditors"), creditors and parties in interest herein, by counsel, and hereby object to Fifth Third Bank's Motion to Continue Hearing [Doc. 2305] (the "Motion to Continue"). In support of this Joint Objection, the Objecting Creditors respectfully state as follows:

1. On August 2, 2013, Fifth Third Bank ("Fifth Third") filed Fifth Third Bank's Motion for Proctive Order [Doc. 2285] (the "Protective Order Motion").
2. On August 6, 2013, an Official Court Notice was entered in this Case [Doc. 2289] setting a hearing on the Protective Order Motion for August 19, 2013, at 1:30 p.m. EDT (the "Hearing").
3. On August 14, 2013—within the time allowed by the Court for objections to the Protective Order Motion—the Objecting Creditors filed a joint objection to the Protective Order

Motion [Doc. 2303]. The First Bank and Trust Company and Wells Fargo Bank, N.A. (“Wells Fargo”) also timely filed objections to the Protective Order Motion on August 14, 2013 [Doc. 2303 & 2304].

4. Now, one day after the filing of the three objections to its Protective Order Motion, Fifth Third seeks a continuance of the Hearing, contending that one of its several attorneys, Eric W. Richardson, has a conflict on August 19th; that Fifth Third needs additional time to respond to the (timely) objections to the Protective Order Motion; and that only Wells Fargo has a “direct interest” in the Protective Order Motion, thus implying that the other objectors should be ignored for purposes of scheduling a hearing on the Protective Order Motion.

5. First, the Hearing has been set for nine (9) days now. Fifth Third should have informed this Court (and all other parties entitled to notice) immediately of any conflict on the part of its counsel that is so pressing as to require a continuance of the Hearing, rather than waiting until the day after the objecting parties’ deadline had passed and objections were lodged before springing a continuance motion upon the Court and the objectors.

6. Second, the Motion to Continue does not explain why it is necessary for Mr. Richardson to be present on August 19th in order for the Hearing on the Protective Order Motion to go forward. Mr. Richardson is but one of at least three attorneys for Fifth Third who regularly file papers and appear in this Case on behalf of Fifth Third. Kent A. Britt and Randall D. LaTour, who are Fifth Third counsel of record listed in the Protective Order Motion, are both more than capable of representing Fifth Third at the Hearing, should Messrs. Britt and LaTour somehow be unavailable, too. And it is safe to assume that there are other lawyers at Vorys, Sater, Seymour, and Pease LLP that are qualified and capable of representing Fifth Third at the

Hearing. A conflict on the part of one of Fifth Third's several lawyers is a red herring and certainly no reason to continue the Hearing.

7. Third, if granted at all, a continuance of the Hearing should be as short as possible. This matter does not need to be heard on an omnibus hearing date. This is a discrete matter, with only three objections having been filed, and the Trustee did not even weigh in on the Protective Order Motion. Therefore, the Hearing should be rescheduled, if at all, at the Court's earliest convenience.

8. Finally, any contention that Wells Fargo is the only party with a "direct interest" in the Protective Order Motion is belied by the Protective Order Motion itself, which requests an order of this Court "prohibiting the use of Confidential Materials by Wells Fargo *or any other third party* in any manner inconsistent with the terms and conditions of the Order." Protective Order Motion, p. 5 [Doc. 2285] (emphasis added). Regardless of the impetus for the filing of the Protective Order Motion, Fifth Third has now requested relief from this Court that would admittedly impact third parties, not the least of which are parties like the Objecting Creditors that are involved in collateral litigation with Fifth Third in which the very testimony Fifth Third is now trying to bury in Bankruptcy Court is being or will be used in the near future.

WHEREFORE, the Objecting Creditors respectfully request that the Court enter an order overruling the Motion to Continue, or alternatively, if the Court were inclined to grant a continuance, rescheduling the hearing on the Protective Order Motion at the Court's earliest convenience.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on August 15, 2013, a copy of the foregoing pleading was served by first-class U.S. mail, postage prepaid, or by electronic mail as indicated, to the following:

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